

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Niagara Post Office
Niagara, North Dakota

Docket No. A2012-77

ORDER AFFIRMING DETERMINATION

(Issued March 7, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 18, 2011, the Citizens Against the Closure of the Niagara Post Office filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Niagara, North Dakota post office (Niagara post office).² Additional petitions for review were received from Sandra K. Behm (Petitioner Behm) and Tim Krueger (Petitioner Krueger).³ The Final Determination to close the Niagara post office is affirmed.⁴

II. PROCEDURAL HISTORY

On December 2, 2011, the Commission established Docket No. A2012-77 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵ On December 5, 2011, the Postal Service filed the Administrative Record with the Commission.⁶ The Postal Service also filed comments requesting that the Commission

² Petition for Review received from the Citizens Against the Closure of the Niagara Post Office regarding the Niagara, North Dakota post office 58266, November 18, 2011 (Citizens Petition). The Citizens filed an addendum to their Petition on November 23, 2011 (Citizens Petition Addendum).

³ Petition for Review received from Sandra K. Behm, November 29, 2011 (Behm Petition); Petition for Review received from Tim Krueger, November 29, 2011 (Krueger Petition).

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No.1020, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 2, 2011.

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing, December 5, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Niagara, ND Post Office and Extend Service by Highway Contract Route Service (Final Determination).

affirm its Final Determination.⁷ On January 26, 2012, the Public Representative filed a reply brief.⁸

III. BACKGROUND

The Niagara post office provides retail postal services and service to thirty-one post office box customers. Final Determination at 2. No delivery customers are served through this post office. The Niagara post office, an EAS-53 level facility, provides retail service from 9:30 a.m. to 1:00 p.m., Monday through Friday, and 9:30 a.m. to 10:15 a.m. on Saturday. Lobby access hours are 6:00 a.m. through 10:00 a.m., Monday through Saturday. *Id.*

The postmaster position became vacant on October 1, 2008 when the Niagara postmaster resigned. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* at 2, 6. Retail transactions average 11 transactions daily (11 minutes of retail workload). *Id.* at 2. Post office receipts for the last 3 years were \$11,384.00 in FY 2008; \$11,090.00 in FY 2009; and \$10,145.00 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$23,719 annually. *Id.* at 6.

After the closure, retail services will be provided by the Petersburg post office located approximately 7 miles away.⁹ *Id.* at 2. Delivery service will be provided by highway contract route (HCR) service through the Petersburg post office. The Petersburg post office is an EAS-11 level post office, with retail hours of 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:15 p.m., Monday through Friday, and 7:30 a.m. to 8:45 p.m. on Saturday. Fifty-four (54) post office boxes are available. *Id.*

⁷ United States Postal Service Comments Regarding Appeal, January 12, 2012 (Postal Service Comments).

⁸ Reply Brief of the Public Representative, January 26, 2012 (PR Reply Brief).

⁹ MapQuest estimates the driving distance between the Niagara and Petersburg post offices to be approximately 7.0 miles (8 minutes driving time).

Retail services are also available from the Larimore post office located approximately 17 miles away.¹⁰ *Id.* The Larimore post office is an EAS-15 level post office, with retail hours of 9:15 a.m. to 12:30 p.m. and 1:30 p.m. to 4:45 p.m., Monday through Friday, and 9:15 a.m. to 10:45 a.m. on Saturday. Seventy-three (73) post office boxes are available. *Id.* The Postal Service will continue to use the community name in the new mailing address. *Id.* at 5.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Niagara post office. Petitioners argue the closure will adversely affect the Niagara community identity. Citizens Petition at 1; Behm Petition at 1. Petitioners contend that HCR service will not provide regular and effective service to Niagara citizens and note specific burdens of the replacement service on Niagara residents. Citizens Petition at 1; Behm Petition at 1; Krueger Petition at 1. Petitioner Behm also alludes to the fact that the cost savings from the closing are inaccurate. Behm Petition at 1. Petitioners further suggest that employees will be adversely affected by the closure. Citizens Petition at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Niagara post office. Postal Service Comments at 2. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Niagara community; (3) the economic savings expected to result from discontinuing the Niagara post office; and (4) the impact on employees. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Niagara post office should be affirmed. *Id.* at 2, 12.

The Postal Service explains that its decision to close the Niagara post office was based on several factors, including:

¹⁰ MapQuest estimates the driving distance between the Niagara and Larimore post offices to be approximately 16.6 miles (18 minutes driving time).

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4. The Postal Service contends that it will continue to provide regular and effective postal services to the Niagara community when the Final Determination is implemented. *Id.* at 4-5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Niagara community, economic savings, and the effect on postal employees. *Id.* at 12.

Public Representative. The Public Representative recommends affirming the decision to close the Niagara post office. PR Reply brief at 8. He states that the Postal Service complied with the notice and posting requirements of 39 U.S.C. § 404(d)(1). *Id.* While he believes that the Postal Service has considered the pertinent factors of 39 U.S.C. § 404(d)(2), he questions whether the Postal Service will realize the full amount of the estimated cost savings. *Id.* at 6-7. However, the Public Representative concludes that the Final Determination of the Postal Service to close the Niagara post office should be affirmed. *Id.* at 8.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 25, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Niagara post office. Final Determination at 2. A total of 130 questionnaires were distributed to customers of the Niagara post office. Other questionnaires were made available at the retail counter of the Niagara post office. A total of forty questionnaires were returned. On June 2, 2011, the Postal Service held a community meeting at the Niagara Fire Hall to address customer concerns. Twenty-nine (29) customers attended. *Id.*

The Postal Service posted the proposal to close the Niagara post office with an invitation for comments at the Niagara, Larimore, and Petersburg post offices from

July 25, 2011 through September 25, 2011. *Id.* The Final Determination was posted at the Niagara and Petersburg post offices from October 24, 2011 through November 22, 2011. Administrative Record, Item No. 49. The Final Determination was posted at the Larimore post office from October 24, 2011 through November 26, 2011.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Niagara, North Dakota is an incorporated community located in Grand Forks County, North Dakota. Administrative Record, Item No. 16. The community is administered politically by the Niagara City Council. Police protection is provided by the Grand Forks County Sheriff Department. Fire protection is provided by the Niagara Volunteer Fire Department. The community is comprised of farmers, retirees, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Niagara community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Niagara post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 5-6.

Petitioners argue that closing the Niagara post office will have a negative effect on the Niagara community and create hardships for the population. Citizens Petition at 1; Krueger Petition at 1. Petitioners are particularly concerned about the loss of a community bulletin board, and note that closing the post office would mean the loss of a meeting place for Niagara residents. Citizens Petition at 1; Citizens Petition Addendum at 8.

The Postal Service responds that the effect of the closing of the Niagara post office on the community was extensively considered, as reflected in the Administrative Record. Postal Service Comments at 9. The Postal Service explains that other retail outlets often display community bulletin boards, and that the Petersburg post office may have a public bulletin board that can be used for the same purpose. The Postal Service also suggests that residents may continue to meet informally, socialize, and share information at other businesses, churches, and residences in town. The Postal Service states that non-postal services can be provided by the Petersburg post office or by local government agencies. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Niagara postmaster resigned on October 1, 2008 and that an OIC has operated the Niagara post office since then. Final Determination at 2, 6. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.* at 6.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Niagara post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Niagara customers. Postal Service Comments at 5. It asserts that customers of the closed Niagara post office may obtain retail services at the Petersburg post office located 7 miles away.

Final Determination at 2. Delivery service will be provided by HCR service through the Petersburg post office. Niagara post office box customers may obtain Post Office Box service at the Petersburg post office, which has 54 boxes available, or at the Larimore post office, which has 73 boxes available. *Id.*

Petitioners argue that postal customers will face challenges retrieving mail, particularly with respect to senior citizens and individuals with disabilities, noting that the closure would require residents to travel greater distances to obtain postal services. Citizens Petition at 1. For customers choosing not to travel to the Petersburg post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that carrier service is beneficial to many senior citizens and those who face special challenges because it allows them to obtain some postal services without having to travel to the post office. *Id.* at 7. It further explains that it will provide delivery service to the homes of customers in hardship cases. *Id.*

Petitioners expressed concerns about mail security. Citizens Petition at 1; Krueger Petition at 1. The Postal Service contends that customers may place a lock on their mailboxes. Postal Service Comments at 6. The Postal Service adds that it researched this issue with the Postal Inspection Service and found there has only been one report of mail theft or vandalism in the area. *Id.*

Petitioners argue that snowy conditions will limit accessibility to mailboxes, and are concerned that senior citizens and individuals with disabilities will be unable to remove snow to retrieve their mail. Citizens Petition at 1. The Postal Service contends that the safety of customer access is routinely considered in connection with curbside delivery, and that “[d]elivery may be provided to boxes at the curb so they can be safely and conveniently served by the carrier from the carrier’s vehicle, and so that customers have reasonable and safe access.” Postal Service Comments at 6, *citing* Postal Operations Manual § 631.32.

Petitioners also note that not all members of the community have access to computers and the Internet. Citizens Petition at 1. The Postal Service asserts that

services are available for these customers through options including Stamps by Mail or Money Order application forms, the availability of stamps from stores and gas stations, as well as special services provided by the contract carrier. Postal Service Comments at 7.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$23,719. Final Determination at 6. It derives this figure by summing the following costs: postmaster salary and benefits (\$20,492) and annual lease costs (\$5,556), minus the cost of replacement service (\$2,329). *Id.*

The Niagara post office postmaster resigned on October 1, 2008. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Niagara post office has been staffed by an OIC for approximately 3 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

Petitioner Behm expressed concerns regarding the effect of closing of small and rural post offices on veterans and their families. Behm Petition at 1. The Postal Service contends that a maximum degree of effective and regular postal services to the area and community could be provided with contract delivery service. Postal Service Comments at 11. It also states that contract route carrier service would cost substantially less than maintaining the Niagara post office. *Id.* at 10.

The Public Representative argues that the Postal Service's cost savings estimate is inflated. PR Reply Brief at 7. He contends that the Postal Service fails to take into account the likelihood of revenue losses due to the possibility of customers using

competitors for services after the post office closes, as well as any loss of post office box revenue resulting from post office box customers switching to roadside HCR service. *Id.*

The Postal Service contends that Administrative Record evidence supports its estimates of cost savings. Postal Service Comments at 11. The Administrative Record shows that the Postal Service did calculate the annual cost of replacement service. Final Determination at 6.

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Niagara post office is affirmed.

It is ordered:

The Postal Service's determination to close the Niagara, North Dakota post office is affirmed.¹¹

By the Commission.

Shoshana M. Grove
Secretary

¹¹ See footnote 4, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Niagara post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster resigned on October 1, 2008. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for more than 3 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Niagara. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Niagara, North Dakota and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for more than 3 years, since October 2008, not an EAS-53 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the current lease does not terminate until October 31, 2013, and does not have a 30-day termination clause. Administrative Record, Item No. 18. The Postal Service should note that any savings from the lease will not be realized for 20 months. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Niagara post office and should be remanded.

Nanci E. Langley